Badan Pengurusan Bersama Mesahill v Gala Interaktif Sdn Bhd

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO WA-11ANCVC-159–12 OF 2021
LEONG WAI HONG JC
23 MAY 2022

Civil Procedure — Jurisdiction — Magistrate — Whether magistrates' court can grant declaratory relief — Subordinate Courts Act ss 65 & 90

Civil Procedure — Striking out — Appeal against — Appeal against the decision of the magistrates' court in striking out the suit — Whether the court is empowered to strike out 'anything in pleading' — Rules of Court 2012 O 18 r 19(1)

This was an appeal by the plaintiff against the decision of the magistrate's court which allowed the defendant's application under O 18 r 19(1)(a) to (d) of the Rules of Court 2012 ('the ROC 2012') to strike out the plaintiff's claim. The defendant's application was on the basis that the plaintiff's claims in its amended statement of claims were beyond the jurisdiction of the magistrate's court. The plaintiff was the joint management body known as Mesa Hill Service Apartment ('Mesa Hill') and the defendant was hired to provide the building management services for Mesa Hill. On the expiration of the contract the plaintiff requested the defendant to hand over all the plaintiff's documents together with the management accounts. The plaintiff alleged the defendant refused and or neglected to hand over the management accounts and wanted a sum of RM7,000 to complete the preparation of the management accounts besides the monthly services fees of RM15,900. The plaintiff further alleged that after agreeing to prepare the management accounts for a sum of RM7,000, the defendant handed over a three-page accounts that were incomplete. The plaintiff then appointed a third party to complete the management accounts at a cost of RM44,000. Therefore, the plaintiff then sued the defendant for a sum of RM44,000 for breach of contract. The plaintiff, then amended its statement of claim to set out particulars of the management contract, added additional prayers punitive and exemplary damages and a declaration that the outstanding invoice owed to the defendant by the plaintiff (if any) was not claimable by the defendant since the defendant had failed to provide complete service to the plaintiff. In its amended defence and counterclaim, the defendant pleaded it has no obligation to provide the management accounts and denied the allegation of breach of contract.

Held, allowing the appeal in part:

(1) The magistrates' court has no jurisdiction to grant declaratory relief. Its jurisdiction was merely to decide all actions and suits where the amount in dispute or value of the subject matter does not exceed one hundred thousand ringgits. This was clear from s 65 read with s 90 of the Subordinate Courts Act 1948 (see para 19).

(2) The magistrate was wrong to strike out the whole suit just because she has no jurisdiction to grant declaratory relief. This was because the plaintiff was also suing for monetary sums in paras 16(a) to (c) of the amended statement of claim. These sums are well within the magistrates' court jurisdiction as these sums do not exceed RM100,000 (see para 20).

(3) The magistrate should have just struck out the declaratory relief as empowered under O18 r 19(1) of the ROC 2012 to strike out 'anything in any pleading'. The magistrate was clearly wrong to strike out the whole suit as the defendant has not shown that these monetary claims are 'obviously unsustainable' (see para 21).

[Bahasa Malaysia summary

Ini adalah rayuan oleh plaintif terhadap keputusan mahkamah majistret yang membenarkan permohonan defendan di bawah A 18 k 19(1)(a) hingga (d) Kaedah-Kaedah Mahkamah 2012 ('KKM 2012') untuk membatalkan tuntutan plaintif. Permohonan defendan berlatarkan bahawa tuntutan plaintif dalam penyataan tuntutan terpindanya adalah melebihi bidang kuasa mahkamah majistret. Plaintif merupakan badan pengurusan bersama yang dikenali sebagai Mesa Hill Service Apartment ('Mesa Hill') dan defendan telah diupah untuk menyediakan servis pengurusan bangunan untuk Mesa Hill. Semasa peluputan kontrak, plaintif telah meminta defendan untuk menyerahkan semua dokumen plaintif berserta dengan pengurusan akaun-akaun. Plaintif telah menuduh defendan kononnya enggan dan atau cuai untuk menyerahkan semula akaun-akaun pengurusan dan meminta sejumlah RM7,000 bagi melengkapkan persediaan akaun-akaun pengurusan tersebut selain dari bayaran yuran servis bulanannya, RM15,900. Plaintif seterusnya, kononnya menuduh bahawa selepas persetujuan bayaran RM7,000 untuk penyediaan akaun-akaun pengurusan tersebut, defendan telah menyerahkan tiga muka surat akaun yang tidak lengkap. Plaintif kemudiannya, melantik pihak ketiga untuk melengkapkan akaun-akaun pengurusan tersebut dengan kos sebanyak RM44,000. Oleh itu, plaintif menyaman defendan sebanyak RM44,000 kerana melanggar kontrak. Plaintif kemudiannya, meminda pernyataan tuntutan bagi menyatakan kandungan kontrak pengurusan, menambah permohonan tambahan ganti rugi punitif dan teladan serta satu deklarasi di mana keberhutangan invois terhadap defendan oleh plaintif (sekiranya ada) tidak boleh dituntut oleh sebab defendan telah gagal untuk menyediakan servis yang lengkap kepada plaintif.

Dalam penyataan pembelaan terpinda dan tuntutan balas, defendan memplidkan bahawa mereka tidak mempunyai kewajipan untuk menyediakan akaun pengurusan tersebut dan menafikan pertuduhan pelanggaran kontrak.

Diputuskan, membenarkan sebahagian rayuan:

(1) Mahkamah majistret tiada bidang kuasa untuk memberikan perisytiharan relif. Bidang kuasa majistret hanya untuk memutuskan segala tindakan dan guaman di mana amaun yang dipertikaikan atau nilai hal perkara itu tidak melebihi dua ratus lima puluh ribu ringgit. Ini jelas daripada s 65 yang dibaca bersama s 90 Akta Mahkamah Rendah 1948 (lihat perenggan 19).

(2) Majistret terkhilaf untuk membatalkan seluruh tindakan hanya atas sebab beliau tidak mempunyai bidang kuasa untuk memberi perisyitiharaan relief. Ini adalah kerana plaintif juga menyaman untuk 'monetary sums' di perenggan 16(a) hingga (c) pernytaan tuntutan terpinda. Amaun-amaun ini adalah di bawah bidang kuasa mahkamah majistret kerana ianya tidak melebihi RM100,000 (lihat perenggan 20).

(3) Majistret juga sepatutnya membatalkan deklatori relif seperti yang telah diperuntukkan di bawah A 18 k 19(1) KKM 2012 untuk membatalkan apa-apa jua dalam mana-mana pliding. Majistret jelas terkhilaf untuk membatalkan seluruh tindakan kerana defendan tidak mendedahkan bahawa segala tuntutan kewangan adalah kepada dasar wajahnya 'obviously unsustainable' (lihat perenggan 21).]

Cases referred to

Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corporation Bhd [1993] 3 MLJ 36; [1993] 4 CLJ 7, SC (refd)

Wong Loy Fatt & Anor v Lim Tok Yew [2015] MLJU 1966; [2015] 5 CLJ 602, HC (refd)

Legislation referred to

Rules of Court 2012 O 18 r 19(1)
Strata Management Act 2013
Subordinate Courts Act 1948 ss 65, 90

Cheok Swin Meng (Tan Lay Kuan with him) (Yeoh Shim Siow & Lay Kuan) for the appellant.
Ng Yew Huoi (Yap Jia Sin with him) (Yew Huoi, How & Assoc) for the respondent.

Leong Wai Hong JC:

INTRODUCTION

[1] Parties will be cited as they were cited at the court below.

[2] The defendant had applied to strike out the plaintiff's suit on the basis that the plaintiff's claims in the amended statement of claim are beyond the jurisdiction of the magistrates' court. The magistrate allowed the application on 7 December 2021.

[3] The plaintiff appealed against the magistrates' court decision. I allowed the appeal partly on 22 March 2022. The defendant is dissatisfied and has applied for leave to appeal to the Court of Appeal on 15 March 2022. These are my grounds of judgment.

BACKGROUND FACTS

[4] The plaintiff's pleaded case is as follows. The plaintiff is the joint management body of a development known as Mesa Hill Service Apartment. The defendant provides building management services.

[5] The plaintiff hired the defendant to provide building management services for Mesa Hill Service Apartment. On the expiration of the contract the plaintiff requested the defendant to hand over all the plaintiff's documents together with the management accounts.

[6] The plaintiff alleged the defendant refused and or neglected to hand over the management accounts and wanted a sum of RM7,000 to complete the preparation of the management accounts besides the monthly services fees of RM15,900.

[7] The plaintiff also alleged it has no choice but to agree as the plaintiff needed to comply with the rules set by the Commissioner of Building and the Strata Management Act 2013.

[8] The plaintiff further alleged that after agreeing to prepare the management accounts for a sum of RM7,000 the defendant handed over a three-page accounts which the plaintiff's auditors said were incomplete. Information and clarification were sought from the defendant but the defendant refused to comply.

[9] The plaintiff then appointed a third party to complete the management accounts at a cost of RM44,000.

[10] Therefore, the plaintiff filed a writ and statement of claim dated 21 January 2021 claiming against the defendant a sum of RM44,000 for breach of contract. The plaintiff also prayed for surrender of the plaintiff's documents in the possession of the defendant, interest and costs.

[11] Subsequently, as the defendant failed to enter an appearance, the plaintiff had obtained judgment in default against the defendant. The judgment in default was later set aside by the court for reasons that are not material to this appeal.

[12] The plaintiff then amended its statement of claim dated 10 September 2021 to set out particulars of the management contract, added additional prayers for RM3,500, RM1,184, punitive and exemplary damages and a declaration that the outstanding invoice owed to the defendant by the plaintiff (if any) is not claimable by the defendant since the defendant had failed to provide complete service to the plaintiff.

[13] In its amended defence and counterclaim dated 24 September 2021 the defendant denies that its work included audited accounts and data entry work. The defendant pleaded it has no obligation to provide the management accounts. The defendant also denies that it had failed to subsequently do satisfactorily the management accounts based on the agreed fee of RM7,000. The defendant therefore denies the allegation by the plaintiff of breach of contract amounting to RM44,000 payable by the defendant. The defendant further denies that it had failed to hand over all documents back to the plaintiff and is therefore not liable for the claimed sum of RM1,184. Lastly, the defendant alleges fraud and misrepresentation by the plaintiff in respect of the contract to do the management accounts based on the agreed fee of RM7,000.

[14] The defendant then filed an application dated 24 September 2021 to strike out the plaintiff's suit under O 18 r 19(1)(a) to (d) and/or that the magistrates' court has no jurisdiction to grant the declaratory relief sought by the plaintiff.

[15] In its supporting affidavit dated 24 September 2021 the defendant relied solely on the fact that the plaintiff had amended its statement of claim by adding a declaratory relief and that the said declaratory relief was not an alternative prayer but an integral order in the plaintiff's suit by use of the word 'and' in the reliefs prayed for by the plaintiff (see supporting affidavit at para 11). The defendant did not mount any argument that the plaintiff's suit claiming for monetary sums should also be struck out. No documents in any event were exhibited to support the striking out.

[16] The plaintiff in its reply affidavit merely averred that it has filed an OS in the sessions court to apply to transfer the suit to the sessions court.

[17] The defendant in its reply affidavit averred that the filing of the transfer application is an admission by the plaintiff that the magistrates' court has no jurisdiction to hear the claim of the plaintiff. The defendant averred that the plaintiff should withdraw its writ and refile in the sessions court.

AT THE MAGISTRATES' COURT

[18] The learned magistrate struck out the suit based solely on the ground that she has no jurisdiction to grant a declaratory relief. This can be seen from her grounds of decision:

DAPATAN MAHKAMAH

[10] Mahkamah berpuas hati dengan hujahan-hujahan defendan.

[11] Mahkamah juga merujuk kepada kes *Fun Fatt (sebagai pentadbir dan benefisiari tunggal harta pusaka Lo Pang @ Fun Lim, si mati) v Datuk Bandar Kuala Lumpur* [2021] MLJU 2208; [2021] 1 LNS 1703 dimana hakim memetik *Malaysian Civil Procedure 2013*, di ms 242 yang menyatakan:

> A matter can be struck out for example, for having no reasonable cause of action if the pleadings do not indicate a cause of action known in law, where the wrong parties are sued, *where the court lacks jurisdiction*, where the party has no locus standi or where the matter is res judicata.

[12] Merujuk kepada s 90 Akta Mahkamah Rendah 1948:

S 90: Civil Jurisdiction of First Class Magistrate

Subject to the limitations contained in this Act, a First Class Magistrate shall have jurisdiction to try all actions and suits of a civil nature where the amount in dispute or value of the subject-matter does not exceed one hundred thousand ringgit.

[13] Mahkamah juga merujuk S 65(5) Akta Mahkamah Rendah 1948:

> S 65: Civil Jurisdiction of Sessions Courts
>
> 65(5): A Sessions Court may, in respect of any action or suit within the jurisdiction of the Sessions Court, in any proceedings before it:
>
> (a) grant an injunction; and
>
> (b) make a declaration,
>
> whether or not any other relief, redress or remedy is or could be claimed.

[14] Mahkamah juga menggunapakai kes yang dirujuk oleh defendan iaitu di dalam kes *Wong Loy Fatt & Anor v Lim Tok Yew* [2015] MLJU 1966; [2015] 5 CLJ 602 yang menyatakan seperti berikut:

> Civil Jurisdiction of Magistrate
>
> [21] Turning to the second objection of the plaintiff that a magistrate court has

no jurisdiction to grant declaratory relief. The relevant provisions in the Subordinate Courts Act 1948 are:

> s 65(5): A Sessions Court may, in respect of any action or suit within the jurisdiction of the Sessions Court, in any proceedings before it:
>
> (a) grant an injunction; and
>
> (b) make a declaration,
>
> whether or not any other relief, redress or remedy is or could be claimed.
>
> s 90 Subject to the limitations contained in this Act, a First Class Magistrate shall have jurisdiction to try all actions and suits of a civil nature where the amount in dispute or value of the subject matter does not exceed one hundred thousand ringgit.

[22] Section 90 clearly illustrates that the plaintiff is correct in the position she takes as regards the jurisdiction of a first class magistrate to grant declaratory relief. *It is only a sessions judge who is empowered to grant declaratory relief*.

KESIMPULAN

[15] Berdasarkan dapatan-dapatan diatas, *mahkamah berpuas hati dan mendapati sememangnya mahkamah majistret tidak mempunyai bidang kuasa terhadap relief yang dituntut oleh plaintif* di penyata tuntutan terpinda tersebut. Maka permohonan defendan di lampiran 40 ini dibenarkan dengan kos RM500. (Emphasis added.)

MY ANALYSIS

[19] The magistrates' court has no jurisdiction to grant declaratory relief. Its jurisdiction is merely to decide all actions and suits where the amount in dispute or value of the subject matter does not exceed one hundred thousand ringgit. It is only a sessions judge who is empowered to grant declaratory relief. This is clear from s 65 read with s 90 of the Subordinate Courts Act 1948. A High court decision arriving at this same proposition is *Wong Loy Fatt & Anor v Lim Tok Yew* [2015] MLJU 1966; [2015] 5 CLJ 602 at para (21)–(22) SM Komathy Suppiah JC.

[20] However, in my view the learned magistrate was wrong to strike out the whole suit just because she has no jurisdiction to grant a declaratory relief. This is because the plaintiff, besides asking for declaratory relief in para 16[e] of the amended statement of claim, is also suing for monetary sums in paras 16[a] to [c] of the amended statement of claim. These sums are well within the magistrates' court jurisdiction as these sums do not exceed RM100,000.

[21] Under O 18 r 19(1) of the Rules of Court 2012 the court is empowered to strike out 'anything in any pleading'. The learned magistrate should have just struck out the declaratory relief in para 16[e] of the amended statement of

claim. The magistrate was clearly wrong to strike out the whole suit as the defendant has not shown that these monetary claims are on the face of it 'obviously unsustainable'. See *Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corporation Bhd* [1993] 3 MLJ 36; [1993] 4 CLJ 7 (SC) at para 11(e)-(h) per Mohamed Dzaiddin bin Hj Abdullah SCJ.

DECISION

[22] In the premises, the appeal is partly allowed with costs. The declaratory relief in para 16[e] of the amended statement of claim is struck out. The order of the magistrates' court dated 26 November 2021 is set aside. The respondent shall pay to the appellant costs of RM10,000 here and below.

Appeal allowed in part.

Reported by Nursyafiqah Abul Kamar